



State of Connecticut COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

450 Columbus Boulevard, Suite 2, Hartford, CT 06103

Promoting Equality and Justice for all People

Labor Committee Public Hearing – March 15, 2022

CHRO Testimony Regarding

HB 5441 – AA Adopting the Recommendations of the Task Force to Study the State Workforce and Retiring Employees

SB 420 – An AAC the State Workforce and State Discrimination and Retaliation in the Workplace

SB 422 – AAC the Essential Workers COVID-19 Assistance Program

Senator Kushner, Representative Porter, Senator Sampson, Representative Arora, and members of the Labor Committee, the Commission on Human Rights and Opportunities appreciates the opportunity to submit testimony regarding HB 5441, SB 420 and SB 422.

The CHRO is the nation's oldest civil rights enforcement agency whose work has become a model for other states in their efforts to do the same. Over the years, the agency's mission to eliminate discrimination has been expanded to take on discrimination in all its forms. Nowhere has that mission been more important than in eliminating discrimination within state employment itself. The CHRO statutes contain a multitude of provisions aimed at eliminating discrimination within state employment, including those that:

- prohibit discrimination in employment by the state;
- guarantee equal employment in state agencies;
- prohibit discrimination in job placements by state agencies;
- prohibit discrimination in state benefits;
- require cooperation with the CHRO by state agencies;
- hold state employment to a higher standard when considering employment of those with criminal records;
- prohibit sexual orientation discrimination as applied to state agencies and employment;
- ensure the state cannot discriminate in providing services, in giving housing subsidies, and in enacting policies; and
- establish training mandates requiring the CHRO to teach state employees about, among other things, sexual harassment, diversity and inclusion.¹

In short, ensuring the State of Connecticut does not discriminate is one of the chief duties entrusted to the Commission.

As an additional and crucial part of its responsibility to ensure that the State of Connecticut does not discriminate as an employer the CHRO administers the state's affirmative action program. The program has evolved over decades but its core goal has remained remarkably consistent – as laid out in the CHRO's regulation 46a-68-75, the goal is to take "positive action, undertaken with conviction and effort to overcome the present effects of past practices, policies or barriers to equal employment opportunity and to achieve the full and fair participation of women, [B]lack and Hispanics and any other protected group found to be underutilized in the workforce or affected by policies or practices having an adverse impact." The CHRO has

¹ See Conn. Gen. Stat. §§ 46a-60; 46a-70; 46a-72; 46a-76; 46a-77; 46a-80; 46a-81c, 81h, 81i, 81j, 81m.

an entire unit devoted to this goal. It requires that state agencies put together a strategic plan that analyzes recruitment and retention of members of these groups. The affirmative action unit then monitors compliance with that plan and acts when agencies fail to meet their obligations. This is an enormously complex task that the CHRO has dedicated individuals with decades of experience devoted to completing.

The CHRO is fully supportive of the goal in HB 5441, An Act Adopting the Recommendations of the Task Force to Study the State Workforce and Retiring Employees, to seize the opportunity presented by the upcoming wave of retirements to create a workforce that truly embraces diversity and inclusion as its guiding principle. It also supports the overall goals of SB 420, an Act Concerning the State Workforce and Discrimination and Retaliation in the Workplace. However, the CHRO has concerns with the language in these bills and specific comments about each are below.

HB 5441 – An Act Adopting the Recommendations of the Task Force to Study the State Workforce and Retiring Employees

First, there are constitutional concerns. As this committee is aware, the Government cannot discriminate against any individual based on their protected classes. Affirmative action programs and policies meant to address past policies of discrimination only pass constitutional muster because they are narrowly tailored and based on data considering all relevant populations. This is why, for example, Connecticut's affirmative action program establishes goals for men and women in all racial groups and relies on statewide data looking at all relevant workforces based on the pool of individuals qualified to perform the work. HB 5441 has data on current state employment but does not look at data on recruiting pools broken up by professional category and geography as the affirmative action program does. HB 5441 laudably requires agencies to consider ways to recruit more women and people of color but, without detailed nuance as found in the existing affirmative action program, this bill as written will likely result in a policy that unconstitutionally discriminates against other groups.

Portions of the bill are also redundant of current statute and regulations. For example, Section 3 of HB 5441 seeks to create a new position of Chief Diversity, Equity and Inclusion Officer. This new entity will require every agency to file "strategic action plans" to promote diversity. This is in addition to the existing requirement that agencies file affirmative action plans with the CHRO to promote diversity. Further, many of the agency actions called for in Section 3 are redundant of the goals of the study of equity in state government programs and actions required under Sec. 81 of Public Act 21-2 of the June Special Session. As the funding for this study was already allocated by the General Assembly, the CHRO recommends that subsection (b) of Section 3 be removed, and that the equity study be completed before the Equity Advisory Committee is established. Much of what is proposed under Section 4 is already required by CHRO statute as a part of state agency affirmative action plans.

SB 420 - An Act Concerning the State Workforce and Discrimination and Retaliation in the Workplace

While the CHRO is supportive of the goals of SB 420, this bill creates an unnecessary parallel system for the state workforce with new standards of proof and remedies not available to the everyday citizen. It also creates a duplication of efforts with increased costs to the state.

In Section 1, subsection (4) the definition of discrimination is vague in that it does not define what adverse actions are covered. It also fails to include sexual orientation discrimination. Conn. Gen. Stat. §§46a-60 and

46a-81-c already have detailed descriptions of what constitutes illegal employment discrimination and new and separate definitions of these terms are not necessary.

The CHRO generally supports the concepts in Section 2 (a) and (b), but many of these concepts are also already covered in Conn. Gen. Stat. §46a-60 et seq. Section 2(c) is problematic. It makes a presumption that any action an employer takes against a covered employee in violation of this section after a complaint of discrimination shall be deemed to be a discriminatory employment practice as defined in Conn. Gen. Stat. §46a-60. Because this bill does not have the specificity and safeguards that Conn. Gen. Stat. §46a-60 et seq. provides, it allows a circumvention of those safeguards by converting vague violations of this section into discriminatory employment practices. For example, the bill does not make any exception or even limit the time period between the complaint and alleged retaliatory act. Although infrequent, it is unfortunately not unheard of for an employee who knows they are going to be disciplined to make an anticipatory discrimination complaint – under the broad language of this bill, any action taken by the state after that anticipatory complaint could automatically constitute a discriminatory practice without the state being able to defend its actions in any way. The bill also allows for triple damages, which would, unfairly, only be available to state workers.

Section 2(d) would similarly create inequities within discrimination law in the state. It would make an conclusive presumption of harm in an injunctive action a state worker files to halt a termination. Any state employee could unilaterally stop their terminations simply by filing in court. This section also allows state employees to bypass the administrative process and file directly in court. Most, although not all, state employees are members of a union and are required to have a Loudermill hearing before a termination, preventing them from arbitrary termination.

The CHRO and the statutes that we enforce have been deemed substantially equivalent by the EEOC, and for this reason we are able to collect money from the federal government to concurrently investigate these complaints. That money to the general fund would be lost if state workers had the option to bypass the CHRO. Although the CHRO would have a right to intervene in the litigation, we would incur the expense of monitoring court cases and litigating cases in court rather than litigating cases at administrative hearings which is less costly. The CHRO was in part set up to ease the burden on the judicial system - allowing state workers to bypass the CHRO would likely put a meaningful new burden on the court system.

The CHRO applauds the intent of Section 3 but similarly finds the process and office proposed to be flawed. As discussed above, the CHRO already monitors state agencies' affirmative action plans. This section creates parallel system. More concerning, it seems to create mandates to prioritize certain candidates based on race and/or ethnicity. Mandates are akin to quotas which courts have been deemed to be discriminatory and unconstitutional. A commitment to a diverse workforce is important but should not be done through unconstitutional means.

The CHRO is committed to the goals of these pieces of legislation. The proof of that commitment is in the decades of work the agency has been doing to meet its goals. While the CHRO cannot support HB 5441 or SB 420 in their current forms as they are constitutionally flawed and redundant to existing programs, the Commission is eager to continue conversations with the proponents of these bills and members of the committee about the many good concepts in these bills.

SB 422 – AAC the Essential Workers COVID-19 Assistance Program

The CHRO would also like to submit brief comments in support of SB 422, An Act Concerning the Essential Workers COVID-19 Assistance Program. The pandemic has affected everyone, but it hasn't affected everyone equally. When many were able to transition to working safely in their homes, essential workers were required to put their health and safety on the line in order to provide services to keep our society functioning. A recent University of Illinois study found that Black and Hispanic Americans are overrepresented in these essential jobs.² They found that nationwide, 31% of Hispanic workers and 33% of Black workers were in jobs deemed "essential" compared to 26% of White workers. When these workers get sick, disparities in healthcare and resources lead to higher mortality rates for Black and Hispanic workers.³ If they lost their jobs, Black and Hispanic families have fewer assets⁴ to rely on due to the racial wealth gap, forcing them to return to the workforce as quickly as possible.

It is therefore essential that we now take care of these essential workers. This is not just a matter of taking care of those who put their lives on the line during the worst of the pandemic, it is also a matter of addressing the racial disparities put on full display over the past few years.

The Commission on Human Rights and Opportunities appreciates the chance to submit testimony on these important bills and looks forward to working with the Labor Committee as the session progresses.

² <https://publichealth.uic.edu/news-stories/black-hispanic-americans-are-overrepresented-in-essential-jobs/>

³ [Id.](#)

⁴ <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>